

**IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF NEW YORK**

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|---------------------------------|---|----------------------|
| LAMONT B. SIMMONS, |) | CASE NO. 08-6263 SCR |
| MELISSA R. SIMMONS, |) | |
| on behalf of themselves and all |) | |
| others similarly situated, |) | |
| Plaintiffs, |) | |
| |) | |
| VS. |) | |
| |) | |
| Roundup Funding, LLC, |) | |
| Malen & Associates, P.C. |) | |
| |) | |
| Defendants. |) | |

**DEFENDANT'S NOTICE OF MOTION TO DISMISS OR IN THE
ALTERNATIVE MOTION TO REMOVE CASE TO BANKRUPTCY COURT
AND REQUEST FOR ATTORNEY'S FEES**

To: Plaintiffs and their Attorney,
Shmuel Klein, Esq.,
268 Route 59, Spring Valley, NY 10977

Malen & Associates, P.C.
Paul W. Mahler
123 Frost Street, Suite 203
Westbury, NY 11590

PLEASE TAKE NOTICE that on the attached Affirmation of Linh K. Tran, Esq., dated September 24, 2008, motion of the Defendant, Roundup Funding, LLC to dismiss pursuant to Rule 12 (b)(1) of the Federal Rules of Civil Procedure or in the alternative motion to remove to Bankruptcy Court pursuant to 28 U.S.C. § 157(b)(2), §1452(a) and §1441(a) with request for attorney's fees, accompanying Memorandum of Law in support of this motion, and the pleadings herein, Roundup will move this Court before the United States District Judge S. Robinson, for an order pursuant to Rule 12(b)(1) of the Federal

Rules of Civil Procedure granting dismissal of the entire case based upon lack of subject matter or in the alternative, removal of the entire matter to the pending Bankruptcy Court.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: Seattle, WA
 September 24, 2008

Appearing Pro Hac Vice:

 /s/ Linh K. Tran
Attorney for Roundup Funding, LLC
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